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DATE: March 9, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Eighth Antidumping Duty Administrative Review

I. SUMMARY

The Department of Commerce (Commerce) analyzed comments submitted by Hebei Minmetals Co., Ltd. (Hebei Minmetals), Hillman Group, Inc. (Hillman), Mid Continent Steel & Wire, Inc. (the Petitioner), The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, Stanley), Building Material Distributors, Inc. (BMD), and Tianjin Jinghai County Hongli Industry & Business Co., Ltd., Tianjin Jinchi Metal Products Co., Ltd., Shandong Dinglong Import & Export Co., Ltd., Tianjin Zhonglian Metals Ware Co., Ltd., Shanghai Yueda Nails Industry Co., Ltd. and Shanxi Tianli Industries Co., Ltd. (GDLSK Respondents) in the eighth administrative review (AR) of the antidumping duty *Order* on steel nails from the People's Republic of China (China).[1]

Following the *Preliminary Results*[2] and the analysis of the comments received, we made certain changes to the margin calculations for Stanley for the final results, as discussed below.

[1] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).
[2] *See Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016*, 82 FR 42291 (September 7, 2017) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

Additionally, we have determined that Tianjin Lianda is ineligible for a separate rate.[3] Therefore, we have used Stanley's calculated margin to determine the margin applied to those companies that qualify for a separate rate in the final results.[4]
We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

Commerce published in the *Federal Register* the *Preliminary Results* on September 7, 2017.[5] From November 29, 2017, through December 1, 2017, Commerce officials verified the questionnaire responses of Stanley in North Kingstown, Rhode Island.[6] Also, from December 11, 2017, through December 15, 2017, Commerce officials verified the questionnaire responses of Stanley in Langfang, Hebei Province, China.[7] On December 20, 2018, Commerce extended the deadline for the final results in this proceeding by 60 days.[8] On January 23, 2018, we tolled the deadline by three days due to the shutdown of the federal government.[9]

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On February 15, 2018, Hebei Minmetals, Hillman, BMD, the petitioner, Stanley, and GDLSK Respondents submitted timely-filed case briefs pursuant to our regulations.[10] Additionally, on

[3] *See* Comment 4A for further discussion.
[4] *See* Comment 4C for further discussion.
[5] *See Preliminary Results*.
[6] *See* Memorandum to the file "Sales Verification Report for The Stanley Works (Langfang) Fastening Systems Co., Ltd. (Stanley Langfang), and Stanley Black & Decker, Inc. (SBD) (collectively, Stanley) in the Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China (China)," dated February 6, 2018 (Stanley Sales Verification Report).
[7] *See* Memorandum to the file "Sales Verification Report for The Stanley Works (Langfang) Fastening Systems Co., Ltd. (Stanley Langfang), and Stanley Black & Decker, Inc. (SBD) (collectively, Stanley) in the Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China (China)," dated February 6, 2018 (Stanley Langfang Verification Report).
[8] *See* Memorandum to James Maeder, "Eighth Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," (December 20, 2017).
[9] *See* Memorandum to The Record, from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (January 23, 2018).
[10] *See* Letter to the Secretary, from Hebei Minmetals regarding "Certain Steel Nails from the People's Republic of China: Case Brief," dated February 15, 2018 (Hebei Minmetals Case Brief); Letter to the Secretary, from Hillman, regarding "Steel Nails from the People's Republic of China ;Case Brief," dated February 15, 2018 (Hillman Case Brief); Letter to the Secretary, from the petitioner, regarding "Certain Steel Nails from the People's Republic of China: Case Brief," dated February 15, 2018 (the petitioner Case Brief); Letter to the Secretary, from Stanley, regarding "Certain Steel Nails from the People's Republic of China; Eighth Administrative Review; Case Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc.," dated February 15, 2018 (Stanley Case Brief); Letter to the Secretary, from BMD, regarding "Certain Steel Nails from the People's Republic of China; Eighth Administrative Review; Submission of Administrative Case Brief," dated February 15, 2018 (BMD Case Brief); and Letter to the Secretary, from GDLSK Respondents, regarding "Case Brief of Certain Chinese Respondents: Administrative Review of the Antidumping Order on Certain Steel Nails from the People's Republic of China (GDLSK Respondents Case Brief), respectively. The GDLSK Respondents' brief contained a general statement of support for the arguments made by other respondent parties in this review.

February 21, 2018, the petitioner and Stanley submitted timely-filed rebuttal briefs.[11] On February, 28, 2018, in response to Commerce's instructions, Stanley re-filed its case brief in order to redact untimely new factual information, and the petitioner re-filed its rebuttal brief in order to redact an untimely new affirmative argument.

III. SCOPE OF THE ORDER

The merchandise covered by this *Order* includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this *Order* are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65, 7317.00.75, 7907.00.6000,[12] 7318.29.0000, and 8206.00.0000.[13]

Excluded from the scope of this *Order* are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: 1) Non-collated (*i.e.*, hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500" to 8", inclusive; and an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual washer or cap diameter of 0.900" to 1.10", inclusive; 2) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 4", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive; 3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 1.75",

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[11] *See* Letter to the Secretary, from the petitioner, regarding "Certain Steel Nails from the People's Republic of China: Rebuttal Brief," dated February 21, 2018 (the petitioner's Rebuttal Brief); Letter to the Secretary, from Stanley, regarding "Certain Steel Nails from the People's Republic of China; Eighth Administrative Review; Rebuttal Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd and Stanley Black & Decker, Inc.," dated February 21, 2018 (Stanley Rebuttal Brief), respectively.

[12] Commerce added the Harmonized Tariff Schedule (HTS) category 7907.00.6000, "Other articles of zinc: Other," to the language of the *Order*. *See* Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, regarding "Certain Steel Nails from the People's Republic of China: Cobra Anchors Co. Ltd. Final Scope Ruling," dated September 19, 2013.

[13] Commerce added the HTS categories 7318.29.000 and 8206.00.0000 per a request by U.S. Customs and Border Protection on February 24, 2017.

inclusive; an actual shank diameter of 0.116" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive; and 4) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75" to 3", inclusive; an actual shank diameter of 0.131" to 0.152", inclusive; and an actual head diameter of 0.450" to 0.813", inclusive.

Also excluded from the scope of this *Order* are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this *Order* are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.0020 and 7317.0030. Also excluded from the scope of this *Order* are thumb tacks, which are currently classified under HTSUS 7317.00.1000.

Also excluded from the scope of this *Order* are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this *Order* are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

IV. DISCUSSION OF THE ISSUES

General Issues

Comment 1: Low Carbon Steel Wire Rod Surrogate Value

The petitioner's Comments:

- Commerce should correct two errors in its calculation of the surrogate value (SV) for low carbon steel wire rod (SWR).[14] Commerce failed to exclude import data from South Korea and India, which both maintain non-specific export subsidies, in its calculations, and failed to base the SV on the most specific data available.[15]
- In addition, Commerce should value Stanley's low carbon SWR using the Thai harmonized tariff schedule (HTS) category 7213.91.90.012. This is the only HTS code that captures the carbon and silicon content specific to Stanley's input.[16]
- If Commerce relies solely on the carbon content, it should base the SV calculation on the import data for HTS number 7213.91.90.012 and 7213.91.90.035.[17]

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[14] *See* Petitioner's Case Brief at 3.
[15] *Id*.
[16] *Id*.
[17] *Id*.

- HTS number 7213.91.90.035 does not reflect the specific silicon content of Stanley's input but does capture the carbon content.[18]
- Separately, Commerce should use HTS numbers 7213.91.90.033 and 7213.91.90.011 to value Tianjin Lianda's low carbon SWR because those two categories capture the carbon and silicon content of its low carbon SWR.[19]

Stanley's Comments:

- The grade of low carbon SWR Stanley consumes, permits a range of silicon content from zero up to including 0.3 percent. This range embraces the four Thai HTS subheadings used in the *Preliminary Results*- 7213.91.90.012, 7213.91.90.033, 7213.91.90.034, 7213.91.90.035.[20]
- The petitioner does not present any rationale for its change of position that silicon is the chemical element that should govern identification of the Thai HTS subheading for low carbon SWR.[21]
- It is notable that the volume of imports classified under Thai HTS subheading 7213.91.90.012 is distinctly the smallest among the four relevant Thai HTS subheadings, while the average unit value of imports under this subheading is among the highest. This fact confirms that the petitioner is advocating for a distortive selection in an effort to maximize the SV for low carbon SWR.[22] Commerce should reject this effort and continue to calculate the SV for Stanley's low carbon SWR with the same four Thai HTS subheadings used in the *Preliminary Results*.[23]

Commerce's Position: We agree with the petitioner and have selected Thai HTS 7213.91.90.012 to value Stanley's low carbon steel wire rod (SWR) input. In proceedings involving non-market economy (NME) countries, section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), instructs Commerce to value the factors of production (FOPs) with the best available information from a market economy country, or countries, that Commerce considers appropriate. Section 773(c)(4) of the Act requires Commerce to value FOPs in a surrogate country that is: (A) at a level of economic development comparable to that of the nonmarket economy country; and (B) a significant producer of comparable merchandise. Commerce's regulation, 19 CFR 351.408, provides a rule for calculating normal value for NME countries. For instance, in valuing FOPs, pursuant to 19 CFR 351.408(c)(1) and (2), Commerce normally will utilize publicly available information, and will normally value all FOPs from a single surrogate country. When considering what constitutes the best available information, Commerce considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input in question.[24] There is no hierarchy among these criteria.

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[18] *Id*.
[19] *Id*.
[20] *See* Stanley's Rebuttal Brief at 4-5.
[21] *Id*.
[22] *Id.* at 5.
[23] *Id.*
[24] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006) (*Lined Paper*) and accompanying IDM at Comment 3.

Commerce's preference is to satisfy the breadth of the aforementioned selection criteria.[25] Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing FOPs.[26] Commerce weighs the available information with respect to each input value and makes a product-specific and case-specific decision as to what constitutes the best available SV for each input.[27] In many cases, Commerce values FOPs using import statistics because these data fulfill Commerce's SV selection criteria, *i.e.*, import statistics are publicly-available, represent a broad market average, are contemporaneous, sufficiently specific, and are tax and duty exclusive.[28] On a routine basis, Commerce values FOPs using Global Trade Atlas (GTA) import statistics to determine the SVs for certain inputs, which represent annualized, cumulative quantities and values for the applicable POR.[29] Indeed, in past reviews of this *Order* we have used GTA data to value FOPs because it fulfilled our SV selection criteria.[30]

For the *Preliminary Results*, we based the SV for low carbon SWR on the following four Thai HTS categories: 1) 7213.91.90.012 (Containing By Weight More Than 0.10% But Not More Than 0.18% Of Carbon And Containing By Weight Not More Than 0.2% Of Silicon And Containing By Weight Not More Than 0.02% Of Aluminum); 2) 7213.91.90.033 (Containing By Weight Not More Than 0.10% Of Carbon And Containing By Weight Not More Than 0.10% Of Silicon And Containing By Weight Not More Than 0.02% Of Aluminum); 3) 7213.91.90.034 (Containing By Weight More Than 0.10% But Not More Than 0.15% Of Carbon And Containing By Weight Not More Than 0.10% Of Silicon And Containing By Weight Not Less Than 0.02% Of Aluminum; and 4) 7213.91.90.035 (Containing By Weight More Than 0.15% But Not More Than 0.23% Of Carbon And Containing By Weight Not More Than 0.10% Of Silicon And Containing By Weight Not Less Than 0.02% Of Aluminum.

As noted above, interested parties have argued that Stanley's low carbon SWR should be valued using Thai GTA data, and have presented arguments as to which Thai HTS category is the most specific to the input in question. In recent litigation on the third administrative review of this *Order*, in deciding the most significant factors in determining specificity with respect to the SV

[25] *See*, *e.g.*, *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011) (*Shrimp*) and accompanying IDM at Comment 2.

[26] *See*, *e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms*) and accompanying IDM at Comment 1; *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (*Crawfish*) and accompanying IDM at Comment 2.

[27] *See*, *e.g.*, *Mushrooms* at Comment 1.

[28] *See*, *e.g.*, *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) (*Carbon*) and accompanying IDM at Comment I.C.A; *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 73825 (December 9, 2013) (*FSVs*) and accompanying IDM at Comment 7.

[29] *See*, *e.g.*, *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) (*Wind Towers*) and accompanying IDM at Comment 1.

[30] *See*, *e.g.*, *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments and Final Partial Rescission; 2014-2015*, 82 FR 14344 (March 20, 2017) (*Nails 7 Final*) and accompanying IDM at Comments 9, 10 & 11.

for SWR, we found carbon content to be a major factor because it determines the steel grade of SWR consumed, carbon content is a part of the CONNUM, and the carbon content of the SWR does not change, unlike for example, the diameter of the SWR during the production process.[31] Here, as in the AR3 Remand, we continue to find that carbon content is a major factor when evaluating the specificity of SV data for SWR. As demonstrated below, there is record evidence, such as purchase invoices/mill certificates for SWR that identify the specific carbon content, demonstrating the importance of the carbon content from the perspective of the purchaser/producer of steel nails. In addition, carbon content is part of the steel grade or type, which is one of the physical characteristics for the product matching control number, known as the CONNUM. Thus, the record demonstrates that a producer needs a carbon-specific input to produce a particular carbon-specific output, and carbon content is the only product characteristic to remain intact/unchanged during the production process from the SWR input to the steel nail output.[32] We further find that the carbon content described in the Thai GTA data best describes Stanley's production experience, because it provides data for both low carbon and medium carbon SWR as used and reported by Stanley. In light of these findings, we have first examined which Thai HTS in the GTA data best describes Stanley's production experience based on carbon content.

For low carbon SWR, Stanley reported purchasing a non-alloy SWR measuring 6.5 mm in diameter in grade Q235 (low carbon).[33] Specifically, in the certificate of quality Stanley provided, the carbon content ranged from 0.16 to 0.17 percent.[34] Record evidence indicates there are two HTS numbers that cover Stanley's range in carbon content; 7213.91.90.012 ("more than 0.10% but not more than 0.18% of carbon"), and 7213.91.90.035 ("more than 0.15% but not more than 0.23% of carbon").[35] Therefore, we find HTS 7213.91.90.012 and 7213.91.90.035 to be equally specific.

Stanley also reported the amount of silicon present in the low carbon SWR it consumed,[36] and the silicon content is listed after carbon content in the GTA HTS descriptions.[37] Specifically, Stanley reported that the silicon content was 0.17 to 0.20 percent.[38] Of the two HTS numbers which have a carbon content that matches that of Stanley's SWR input, only one has a silicon content which matches Stanley's. More specifically, with respect to silicon, HTS

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[31] *See* Final Results of Redetermination Pursuant to *Itochu Building Products Co., Inc. v. United States*, Court No. 13-132, Slip Op. 17-66 (CIT 2017), dated August 21, 2017 (AR3 Remand) (where Commerce found that "carbon content is the only characteristic to remain intact/unchanged during the production process from the steel wire rod input to the steel nail output. For example, a producer cannot start with a low-carbon input to produce a medium-carbon nail, or start with a medium-carbon input to produce a low-carbon nail, whereas the diameter is mutable."), affirmed by *Itochu Building Products Co., Inc. v. United States*, Court No. 13-132, Slip Op. 18-3 (CIT Jan. 18, 2018) (*Itochu*).
[32] *See* AR3 Remand and *Itochu*.
[33] *See* Stanley's March 31, 2017, submission at 17, and Exhibit 10.
[34] *Id*. at Exhibit 10.
[35] *See* the petitioner's April 17, 2017, submission at Exhibit 1.
[36] *See* Stanley's March 31, 2017, submission at Exhibit 10. The HTS descriptions also mention aluminum content, but Stanley did not report the aluminum content of its low carbon SWR, and aluminum does not appear on the sample mill certificates for this input. As such, we do not find aluminum content to be instructive in selecting the most appropriate SV for this input.
[37] *See* the petitioner's April 17, 2017, submission at Exhibit 1.
[38] *See* Stanley's March 31, 2017, submission at Exhibit 10.

7213.91.90.012 is described as "containing by weight not more than 0.2% of silicon" and HTS 7213.91.90.035 is described as "containing by weight not more than 0.10% of silicon." We find that the silicon content reported by Stanley instructive in selecting between the two low carbon SWR SVs which have an equally specific carbon content. Put simply, based upon the silicon content in the mill certificate provided by Stanley, its low carbon SWR would not be classified under any other Thai HTS besides 7213.91.90.012. For the final results, we valued Stanley's low carbon SWR using HTS 7213.91.90.012 because it meets Commerce's SV selection criteria and is the most specific SV on the record for the input in question with respect to both carbon and silicon.

Regarding Stanley's argument that the use of 7213.91.90.012 would be distortive, due to its smaller quantity as compared to other HTS numbers, we disagree. For one, each of the HTS numbers with a carbon content that overlaps Stanley's represent significant quantities, especially in relation to each other: 7213.91.90.012, 1.2 million kilograms (kg); 7213.91.90.013, 1.1 million kg; 7213.91.90.034, 4.9 million kg; and, 7213.91.90.035, 6.9 million kg.[39] Thus, we do not find the quantity represented by HTS 7213.91.90.012 to be small.

Moreover, parties have not placed information on the record that would indicate that data for HTS 7213.91.90.012 is distortive or aberrational. When determining whether prices are aberrational, Commerce has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus, it is not a sufficient basis upon which to exclude a particular SV.[40] Rather, it is Commerce's practice that interested parties must provide specific evidence showing whether the value is aberrational. In testing the reliability of SVs, which were valued using import statistics alleged to be aberrational, Commerce's practice is to examine GTA import data from the same HTS number for: (a) the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values, or (b) POR-specific data for potential surrogate countries for a given case.[41] Furthermore, in *Steel Wire Rope*,[42] Commerce stated that it would determine whether unit values are aberrational if they are many times higher than the import values from other countries. In order to demonstrate that a value is aberrational or unreliable, because it significantly deviates from the norm, it is necessary to have multiple points of comparison.[43] In *Xanthan Gum*, Commerce stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value."[44]

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[39] *See* the petitioner's April 17, 2017, submission at Exhibit 1.

[40] *See, e.g.*, *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) and accompanying IDM at Comment 5.

[41] *Id.*; *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying IDM at Comment 6.

[42] *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from India and the People's Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia*, 66 FR 12759 (February 28, 2001) (*Wire Rope*) and accompanying IDM at Comments 1 & 6.

[43] *See, e.g.*, *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying IDM at Comment 14.

[44] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*) and accompanying IDM at Comment 16.A.

The record does not contain information from the other countries on the surrogate country list for the HTS 7213.91.90.012. Stanley submitted Bulgarian GTA data for HTS 7213.91, however these data are only specific to the eight-digit level, whereas the Thai data are specific to the 11-digit level.[45] Moreover, the Bulgarian subcategories for HTS 7213.91 are described as "bars and rods," whereas the input in question is SWR, and the Thai 11-digit Thai HTS number is specific to SWR.[46] Therefore, we are not able to compare POR-specific data for potential surrogate countries to determine if HTS 7213.91.90.012 is aberrational. Record evidence indicates that HTS 7213.91.90.012 had a higher value in past PORs (33 Thai Baht/kg in the seventh review and 37 Thai Baht/kg in the sixth review), than it does in this review (22 Thai Baht/kg).[47] Having compared these points of data, and finding that the value of HTS 7213.91.90.012 is lower in this review than the past two reviews, leads Commerce to conclude that historic data for this HTS is not aberrational.

As described below in Comment 4A, we have determined for these final results that use of AFA is appropriate for Tianjin Lianda, and that it further should be considered as part of the China-wide entity. Therefore, we have not relied on Tianjin Lianda's incomplete questionnaire responses for purposes of determining its margin. However, for the limited purpose of establishing that Tianjin Lianda has not benefitted from its non-cooperation, we have established Tianjin Lianda's margin based upon its available information. For this limited purpose, we find that Tianjin Lianda's low carbon SWR input would only be classified under Thai HTS 7213.91.90.033 based upon its carbon and silicon content, so we have used that category to value its input.[48] See also Comment 5 below.

Lastly, regarding the petitioner's arguments concerning the improper inclusion of South Korean and Indian data in our SV calculation, we agree, and have excluded these data for the final results.

Comment 2: Medium Carbon Steel Wire Rod Surrogate Value

The petitioner's Comments:

- Commerce failed to exclude import data from South Korea and India, which both maintain non-specific export subsidies, in its calculations.[49] When corrected to exclude Thai import data from India and South Korea, the SV based on this HTS number is 23.86 baht/kg.[50]
- Only the medium carbon SWR Thai HTS number 7213.91.90.014 captures the carbon and magnesium content specific to Stanley's and Tianjin Lianda's input.[51]

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[45] *See* Stanley's April 17, 2017, submission at Exhibit SV-3; the petitioner's April 17, 2017 submission at Exhibit 1.
[46] *See* Stanley's April 17, 2017, submission at Exhibit SV-3.
[47] *See* the petitioner's April 17, 2017, submission at Exhibit 1.
[48] *See* Tianjin Lianda's March 27, 2017, submission at 10, 11, and Exhibit C-3. Petitioner had also suggested HTS 7213.91.90.011, but that number would cover some SWR with a carbon content greater than Tianjin Lianda's.
[49] *Id*.
[50] *Id*.
[51] *See* the petitioner's Case Brief at 4.

- If Commerce decides to rely solely on the carbon content, it should base the SV calculation on the import data for HTS numbers 7213.91.90.014 and 7213.91.90.023.[52]

Stanley's Comments:

- The results-oriented advocacy that underlies the petitioner's change of position concerning carbon content as the sole criterion for SV selection is confirmed by the fact that the petitioner advocates a different position with respect to medium carbon SWR.[53]
- The petitioner does not present any rationale for its change of position that magnesium is the element that should govern identification of the Thai HTS subheading for medium carbon SWR.[54]
- Commerce should continue to calculate the SV for Stanley's medium carbon SWR using the same Thai HTS subheadings that were used in the *Preliminary Results*.[55]

Commerce's Position: We agree with the petitioner and have selected Thai HTS 7213.91.90.014 to value Stanley's medium carbon SWR input. As discussed above under Comment 1, we continue to find it appropriate to value the SV for SWR using GTA data, which is consistent with section 773(c) of the Act and 19 CFR 351.408.

For the *Preliminary Results*, we based the SV for medium carbon SWR on the following three Thai HTS categories: 1) 7213.91.90.014 (Containing By Weight More Than 0.40% But Not More Than 0.45% Of Carbon And Containing By Weight Not More Than 0.60% Of Manganese); 2) 7213.91.90.017 (Containing By Weight More Than 0.55% But Not More Than 0.60% Of Carbon And Containing By Weight Not More Than 0.60% Of Manganese); and 3) 7213.91.90.023 (Containing By Weight More Than 0.40% But Not More Than 0.45% Of Carbon And Containing By Weight More Than 0.60% But Less Than 0.90% Of Manganese.

As noted above, interested parties have argued that Stanley's medium carbon SWR should be valued using Thai GTA data, and have presented arguments as to which Thai HTS category is the most specific to the input in question. As discussed above under Comment 1, we continue to find that carbon content is a major factor when evaluating the specificity of SV data for SWR and have therefore examined which Thai HTS in the GTA data best describes Stanley's production experience based on carbon content.

For medium carbon SWR, Stanley reported purchasing non-alloy SWR measuring 6.5 mm in diameter in grade GR45 (medium carbon).[56] Specifically, the inspection certificate provided by Stanley indicates the carbon content was 0.45 percent.[57] Record evidence indicates there are two HTS numbers that cover Stanley's range in carbon content; 7213.91.90.014 ("more than 0.40% but not more than 0.45% of carbon"), and 7213.91.90.023 ("more than 0.40% but not more than

[52] *Id*.
[53] *See* Stanley's Rebuttal Brief at 5.
[54] *Id*.
[55] *Id*. at 6.
[56] *See* Stanley's March 31, 2017, submission at 26, and Exhibit 10.
[57] *Id*. at Exhibit 10.

0.45% of carbon").[58] Therefore, we find HTS 7213.91.90.014 and 7213.91.90.023 to be equally specific to Stanley's medium carbon SWR, based on carbon content.

Stanley also reported the amount of manganese present in the medium carbon SWR it consumed,[59] and the manganese content is listed after carbon content in the GTA HTS descriptions.[60] Specifically, Stanley reported that the manganese content ranged between 0.53 and 0.55 percent.[61] Of the two HTS numbers with a matching carbon content to Stanley's, only one has a matching manganese content, HTS 7213.91.90.014 ("containing by weight not more than 0.60% of manganese"). The description for HTS 7213.91.90.023 indicates a higher manganese content ("containing by weight more than 0.60% but less than 0.90% of manganese") than the medium carbon SWR consumed by Stanley. We find that the manganese content reported by Stanley instructive in selecting between the two medium carbon SWR SVs which have an equally specific carbon content as that information was provided by Stanley and to self-describe their merchandise. Based upon the manganese content in the mill certificate provided by Stanley, its medium carbon SWR would not be classified under any other Thai HTS besides 7213.91.90.014. Thus, for the final results, we valued Stanley's medium carbon SWR using HTS 7213.91.90.014.

Regarding Tianjin Lianda, the record indicates that it only used medium carbon steel wire, not SWR, so this issue is therefore moot.[62]

Lastly, regarding the petitioner's arguments concerning the improper inclusion of South Korean and Indian data in our SV calculation, we agree, and have excluded these data for the final results.

Comment 3: Differential Pricing Methodology

Stanley's Comments

- The *Preliminary Results* do not calculate the Cohen's *d* coefficient correctly because the calculations of the "pooled" standard deviations fail to account for the fact that the population sizes and variances of the test groups for each CONNUM are substantially smaller than the population sizes and variances of the comparison groups.[63]
- The use of pooled standard deviations in calculating Cohen's *d* statistics assumes that a test group and its comparison group are estimates of the same population value and that the standard deviations of the two are essentially the same.[64]
- Stanley's data do not conform to these assumptions – a fact which the *Preliminary Results* unreasonably failed to take into account. Such a flawed statistical procedure renders the *Preliminary Results* unreasonable. In the final results, Commerce should correct this error by

[58] *See* the petitioner's April 17, 2017, submission at Exhibit 1.
[59] *See* Stanley's March 31, 2017, submission at Exhibit 10.
[60] *See* the petitioner's April 17, 2017, submission at Exhibit 1.
[61] *See* Stanley's March 31, 2017, submission at Exhibit 10.
[62] *See* Tianjin Lianda's April 4, 2017, submission at Exhibit D-5.
[63] *See* Stanley's Case Brief at 8-10.
[64] *Id.* at 10.

calculating the pooled standard deviations using standard deviations that are weighted by the sizes of a test group and its comparison group.[65]

- There exists a bias toward high Cohen's *d* Test (CDT) pass rates, which lead to the unreasonably frequent use of the ratio and meaningful difference tests.[66]
- Because of smaller pooled standard deviations of the test and comparison groups, it is unreasonably difficult for a respondent to raise its pricing to avoid a high CDT pass rate.[67]
- Section 777A(d)(1)(B)(ii) of the Act requires Commerce to explain why price differences that vary significantly among purchasers, regions or time periods cannot be taken into account using the average-to-average (A-to-A) price comparison methodology. Commerce has claimed that it meets this statutory burden through its "meaningful difference test."
- To the contrary, this broad comparison of the results of A-to-A and average-to-transaction (A-to-T) margin calculations does not satisfy Commerce's statutory burden under Section 777A(d)(1)(B)(ii) of the Act.[68]
- In the *Preliminary Results,* Commerce identified patterns of significant price differences that are specific to individual CONNUMs. Therefore, the explanation mandated by subsection (B)(ii) must also be specific to individual CONNUMs.[69]
- As conducted in the *Preliminary Results*, the meaningful difference test fails to meet Commerce's statutory obligation because Commerce performed the A-to-A/A-to-T dumping margin comparison based on Stanley's *total sales* rather than on sales of *individual CONNUMs.* (emphasis in the original)[70]
- The meaningful difference test thus had no reasonable relationship to the specific price differences that Commerce identified using the Cohens *d* Test. The *Preliminary Results* thus fail to explain why the A-to-A method could not account for the identified CONNUM-specific price differences.[71]
- Commerce's use of differential pricing in the *Preliminary Results* violates the Agreement on Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement).[72]

The petitioner's Comments

- The differential pricing analysis has been upheld by the courts as lawful and reasonable.[73]
- Commerce correctly calculated the pooled standard deviation. Stanley's arguments to the contrary have been rejected by both Commerce and the Courts.[74]
- The CDT does not have an upward bias in the pass rate. Stanley's argument and analysis have been rejected by Commerce and the Courts. Indeed, Stanley's own data and analysis indicate that Commerce applied either the A-to-T method or the mixed methodology and A-

[65] *Id.* at 10-14.
[66] *Id.* at 15-17.
[67] *Id.* at 17-18.
[68] *Id.* at 18-19.
[69] *Id.* at 19-20.
[70] *Id.* at 20-22.
[71] *Id.* at 22-24.
[72] *Id.* at 24-26.
[73] *See* the petitioner's Case Brief at 33.
[74] *Id.* at 33-36.

to-T method to 19.74 percent of respondents having a CDT pass rate greater than 33 percent.[75]

- The CDT is not unreasonable simply because it is not easy for respondents to revise prices to avoid a high pass rate. This argument has been rejected by both Commerce and the Courts.[76]
- The meaningful difference test reasonably explains why the A-to-A method cannot account for a pattern of significant price differences. This argument has been repeatedly rejected by Commerce and the Courts.[77]
- The WTO decision on *Large Residential Washers from Korea* is not binding until Congress and the Administration implement the decision.[78]

Department's Position: Commerce disagrees with Stanley that the differential pricing analysis, including the Cohen's *d* test, is unreasonable, unlawful, or arbitrary. As an initial matter and to the contrary, we note that the Court of Appeals for the Federal Circuit has upheld key aspects of Commerce's differential pricing analysis, including the application of the "meaningful difference" standard, which compares an A-to-T determined rate using zeroing with a non-zeroed A-to-A rate; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference; Commerce's justification for applying the A-to-T methodology to all sales, instead of just those targeted; Commerce's use of zeroing in applying the A-to-T methodology to all transactions; that the statute does not directly apply to reviews; Congress did not dictate how Commerce should determine if the A-to-A methodology accounts for targeted or masked dumping; the "meaningful difference" test is reasonable; Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T methodology; and it is acceptable to apply zeroing when using the A-to-T methodology.[79] As explained in the *Preliminary Results*, Commerce continues to develop its approach pursuant to its authority to address potential masked dumping.[80] In carrying out this statutory objective, Commerce determines whether "there is a *pattern of export prices* (or constructed export prices) for comparable merchandise *that differs significantly* among purchasers, regions, or periods of time, and…. why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}."[81] With the statutory language in mind, Commerce relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.[82]

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[75] *Id.* at 36-40.
[76] *Id.* at 40-41.
[77] *Id.* at 41-45.
[78] *Id.* at 45-47 *citing Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62715 (September 12, 2016).
[79] *See Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex I*); *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) (*Apex II*).
[80] *See Preliminary Results*, and accompanying Decision Memorandum at 19-21.
[81] *See* section 777A(d)(1)(B) of the Act (emphasis added); *see also Tri Union Frozen Prod., Inc. v. United States,* 163 F. Supp. 3d 1255, 1302 ("{h}ad Congress intended to impose upon Commerce a requirement to ensure statistical significance, Congress presumably would have used language more precise than 'differ significantly.'").
[82] *See* 19 CFR 351.414(c)(1).

Because the statute does not explicitly discuss how Commerce should conduct its determination of less than fair value in reviews,[83] carrying out the purpose of the statute, here, is a gap filling exercise properly conducted by Commerce.[84] Commerce finds that the purpose of section 777A(d)(1)(B) is to evaluate whether the A-to-A method is the appropriate measure to determine whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.[85] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute, these terms impose no additional requirements beyond those specified in the statute for Commerce to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied.[86] The Court of International Trade and the Federal Circuit have upheld Commerce's application of its differential pricing analysis to evaluate the statutory requirements.[87]

Stanley presents several arguments regarding Commerce's differential pricing analysis in the *Preliminary Results*, the first of which is that Commerce should correct its calculation of the Cohen's *d* coefficient because the calculations of the "pooled" standard deviations fail to account for the fact that the population sizes and variances of the test groups for each CONNUM are substantially smaller than the population sizes and variances of the comparison groups. For the Cohen's *d* coefficient, Commerce's examination of the price differences between test and comparison groups is relative to "pooled standard deviation."[88] The use of a simple average in determining the pooled standard deviation equally weighs a respondent's pricing practices to each group and the magnitude of the sales to one group does not skew the outcome. This approach is reasonable and consistent with section 777A(d)(1)(B)(i) of the Act. The pooled standard deviation reflects the dispersion, or variance, of prices within each of the two groups. In other words, Commerce views the pooled standard deviation as an average reflective of Stanley's average pricing behavior for the test and comparison groups.[89] When the variance of prices is small within these two groups, then a small difference between the weighted-average sale prices of the two groups may represent a significant difference, but when the variance within the two groups is larger (*i.e.*, the dispersion of prices within one or both of the groups is greater), then the difference between the weighted-average sale prices of the two groups must be larger in order for the difference to perhaps be significant. When the difference in the weighted-average sale prices between the two groups is measured relative to the pooled standard deviation, then this value is expressed in standardized units based on the dispersion of the prices within each group. This is the concept of an effect size, as represented in the Cohen's *d* coefficient. By giving equal weight to the test and comparison groups, Commerce balances the importance of

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[83] *See Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1286 & n. 7 (CIT 2014).
[84] *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984).
[85] *See* 19 CFR 351.414(c)(1).
[86] *See*, *e.g.*, *Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the administering authority explains why such differences cannot be taken into account using the A-to-A or T-to-T methodologies. Id. § 1677f-1(d)(1)(B). Pricing that meets both conditions is known as 'targeted dumping.'").
[87] *See, e.g., JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015).
[88] The pooled standard deviation is an aggregate measure of the distribution of prices (that is, the variances) within the test and comparison groups.
[89] *See Steel & Wire, Inc. et al v. United States,* 219 F. Supp. 3d 1326, 1342 (CIT 2017).

the exporter's pricing behavior to a given purchaser, region, or time period, and the exporter's pricing behavior to other purchasers, regions, and time periods. Thus, the magnitude of the sales to one group does not skew the outcome.

This approach, as even Stanley itself recognizes, has been upheld several times in litigation.[90] Nonetheless, despite these court decisions to the contrary, Stanley continues to argue that Commerce's calculation of the pooled standard deviation is flawed by not accounting for population size between the test and comparison groups, and it uses its own data to distinguish the facts of this review from the hypothetical example given in one of the court decisions, *Tri Union*.[91] As for the other three court decisions, two of which address Stanley's prior challenges at the CIT, Stanley presents no specific counter-arguments, only contending that they were erroneous.[92] In sum, despite Stanley's protests that Commerce's methodology is flawed, its arguments are unpersuasive and fail to overcome well-established judicial precedent.

Moreover, Stanley fails to establish that a bias exists in Commerce's application of the Cohen's *d* test. Stanley alleges that Commerce's use of the Cohen's *d* test is biased toward finding prices that differ significantly, leading Commerce to overuse the average-to-transaction method.[93] Stanley conflates passing the Cohen's *d* test, the application of the average-to-transaction comparison methodology (*i.e.*, resulting from a finding that a pattern of prices that differ significantly exists and that the average-to-average methodology cannot account for such differences), and a finding of dumping (*i.e.*, finding that a respondent is selling subject merchandise at below normal value). Each of these requires a separate analysis with distinct results that should not be confused with one another. Moreover, Stanley's citations to Commerce's determinations wherein we found that respondents' sales passed the Cohen's *d* test illustrate nothing other than that the respondents' pricing behavior, at times, exhibited certain significant differences in prices.

Stanley attempts to validate its claim regarding the alleged bias of the Cohen's *d* test by pointing to the outcomes of 375 preliminary determinations for respondents in which a differential pricing analysis was employed.[94] Stanley argues that bias exists because "41 percent of the respondents in {these} preliminary decisions each targeted more than two-thirds of their sales – and that five respondents targeted *every* sale."[95] Stanley concludes that "{i}t makes no economic or financial sense for any one company to 'target' more than two-thirds of its sales" and that "{i}t is unreasonable to conclude that over 40 percent of investigated companies do so while selling a wide variety of products having their own market dynamics."[96] However, Stanley's reliance upon these data and analysis fail to establish: (1) that a bias exists among those preliminary

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[90] *See Tri Union Frozen Products, Inc. v. United States*, 163 F. Supp. 3d 1255, 1306 (Ct. Int'l Trade 2016) (*Tri Union*); *see also Mid Continent Steel & Wire, Inc. v. United States*, 219 F. Supp.3d 1326, 1342 (Ct. Int'l Trade 2017); *Xi 'an Metals & Minerals Import & Export Co., Ltd., et al.* v. United States, et al., 256 F. Supp. 3d 1346 (Ct. Int'l Trade 2017); and *The Stanley Works (Langfang) Fastening Systems Co., Ltd. v. United States*, ___ F.Supp.3d ___, Ct. No. 14-112, Slip Op. 17-156 (CIT Nov. 27, 2017).
[91] *See* Stanley's Case Brief at 12-13.
[92] *Id.* at 11-12.
[93] *Id.* at 15-17.
[94] *Id.* at 15 and Addendum A.
[95] *Id.* at 15-16.
[96] *Id.* at 16.

determinations, and (2) how any potential bias would be attributable to Commerce's calculation of the pooled standard deviation based on a simple average of the variances of the test and comparison groups.

Stanley's data fail to demonstrate a bias in Commerce's application of the Cohen's *d* test. The data show that 287 of the 375 cases cited by Stanley involved a sufficient percentage of sales passing the Cohen's *d* test to consider the application of an alternative comparison methodology. Of these, Commerce applied the average-to-transaction method to either a portion or all of a respondent's sales in just 128 of these 287 determinations. Accordingly, relying upon Stanley's own data, there does not exist a bias in Commerce's application of the differential pricing analysis, including the Cohen's *d* test, based on the use of a simple average to determine the pooled standard deviation. Slightly over one-third of the cases to which Stanley cites resulted in the application of an alternative comparison methodology, representing less than one-half of the cases in which there existed a pattern of prices that differ significantly pursuant to the Cohen's *d* and ratio tests.

Stanley states that the data show 153 respondents with CDT "pass" rates of over 66 percent, and five with "pass" rates of 100 percent.[97] Stanley avers that this demonstrates the unreasonableness of differential pricing because it makes no economic sense for any one company to "target" the majority of its sales, and because if *all* sales are "targeted," then none can be.[98] This line of reasoning demonstrates a misunderstanding of how Commerce determines the existence of a pattern of export prices that differs significantly among purchasers, regions, or time periods. Indeed, the focus is not on "targeting" and economic decision-making, but on the difference between export prices.[99] For example, consider two purchasers, A and B. If the prices to purchaser A are found to differ significantly from the prices to purchaser B, then it follows that the prices to purchaser B differ significantly from the prices to purchaser A. Here, it is reasonable to conclude that *all* prices differ significantly. Similarly, if the prices to purchaser A do not differ significantly from the prices to purchaser B, then it follows that the prices to purchaser B do not differ significantly from the prices to purchaser A. Here, it is reasonable to conclude that *none* of the prices differ significantly. While Stanley pointed to three instances where all of the respondents' sales prices differed significantly, there are also 33 cases in the same data where none of the sales prices differed significantly. This demonstrates that Commerce's approach is reasonable and does not exhibit a bias; the phenomenon to which Stanley points as proof of bias is greatly outweighed by the opposite result, *i.e.* that no sales pass the Cohen's *d* test. Accordingly, Stanley's own data demonstrate that, if anything, there is a tendency against finding a pattern of prices that differ significantly across purchasers, regions, or time periods.

Stanley also fails to appreciate the difference between sales which have been found to be at significantly different prices versus the complete process through which Commerce determines whether Commerce has applied an alternative comparison methodology to address masked dumping. In its case brief, Stanley connects high rates of sales passing the Cohen's *d* test to dumping. However, a high passing rate does not mean that the A-to-A methodology cannot

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[97] *Id.* at 15-16.
[98] *Id.* at 16.
[99] *See Xi'an Metals*, 256 F. Supp. 3d at 1370.

account for such differences. As explained above, both requirements of section 777A(d)(1)(B) of the Act must be satisfied before Commerce has the option of applying an alternative comparison method. Thus, even if a large proportion of a company's United States sales pass the Cohen's *d* test, Commerce does not automatically apply the average-to-transaction methodology. Commerce must also consider whether the average-to-average method can account for such differences, and if the standard comparison methodology can account for such differences, then Commerce cannot apply an alternative methodology because both of the statutory requirements have not been met. In other words, a finding that there exists a pattern of prices that differ significantly means only that Commerce will consider whether the standard comparison methodology can account for such differences. A company may sell subject merchandise in the United States market at significantly different prices, yet none of these sales are priced at less than normal value (*i.e.*, there is no dumping). In such a situation, the average-to-average method will be able to account for such differences and the average-to-average method will be used to calculate the weighted-average dumping margin. Likewise, a company can also make these same United States sales at significantly different prices among purchasers, regions, or time periods at prices which are all less than normal value (*i.e.*, all sales are dumped). In such a situation, the average-to-average method also will be able to account for such differences and thus, the average-to-average method will again be used. Thus, even if there is a high Cohen's *d* pass rate, this result is meaningless without consideration of whether the average-to-average method can account for such differences.

Commerce disagrees with Stanley that we did not provide an explanation of why the A-to-A methodology cannot account for pricing differences.[100] As explained in the *Preliminary Results*, if the difference in the weighted-average dumping margins calculated using the A-to-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative method would be appropriate.[101] Commerce determined that a difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method when both margins are above *de minimis*; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.[102] Here, such a meaningful difference exists for Stanley because when comparing Stanley's weight-averaged dumping margin calculated pursuant to the A-to-A method and an alternative comparison method based on applying the A-to-T method only to those U.S. sales that passed the Cohen's *d* test, Stanley's weighted-average dumping margin moves across the *de minimis* threshold. This threshold is reasonable because comparing the weighted-average dumping margins calculated using the two comparison methods allows the Department to quantify the extent to which the A-to-A method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market.[103] Therefore, for these final

[100] *See* Stanley's Case Brief at 18-24.
[101] *See* Preliminary Decision Memorandum at "Determination of Comparison Method."
[102] *Id*.
[103] *See Apex* at 41-45; in particular, "In furtherance of that objective, it is reasonable for Commerce to presume that A-A cannot account for the price differences in instances where A-A is unable to uncover any dumping at all and A-T is able to do so. Therefore, Commerce's explanation that A-A could not account for the significant price differences here is reasonable." *Id.* at 43. Indeed, this is the precise fact patter in this review, where the A-to-A

results, the Department finds that the A-to-A method cannot take into account the observed differences.

Lastly, with respect to Stanley's reliance on *Korea – Washers*, that employing differential pricing violates the Antidumping Agreement, we disagree. As a general matter, the Court of Appeals for the Federal Circuit (CAFC) has held that WTO findings are without effect under U.S. law "unless and until such {a report} has been adopted pursuant to the specified statutory scheme."[104] The WTO's findings in *Korea – Washers* have not been implemented under U.S. law. Indeed, the Statement of Administrative Action (SAA) noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[105] The Department has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA's implementation procedure.

<u>Tianjin Lianda Issues</u>

Comment 4A: Tianjin Lianda's Status for the Final Results

Hillman's Comments:

- On July 10, 2017, Tianjin Lianda withdrew from the record and later requested that its BPI be removed from the record.[106] Commerce typically grants such requests.[107] The fact that the respondent's information and data would be removed from the record, places it in the same position as any respondent which has not replied to the questionnaire.[108] Because the submission would be unverifiable and could not be cited in support of any margin calculation or any determination that would entitle it to a separate rate calculation, the only basis for a facts available (FA) determination of the margin would be the current China-wide rate, or possibly a new China-wide rate based on the results in the review for another respondent.[109]
- However, in this case, Commerce decided that the timing and circumstances of Tianjin Lianda's withdrawal was evident that it was trying to "game" the system and seek a lower margin by withdrawing, than it would have received by completing the review.[110] Thus, Commerce decided to accept Tianjin Lianda's submissions, even those which were withdrawn, and base a margin calculation on non-existent, withdrawn, and clearly non-verifiable information which Commerce would never accept as the basis for a margin under any other circumstance. Commerce states that statutory amendments authorize it to use

methodology applied to Stanley results in a *de minimis* margin, and the A-to-T methodology reveals a positive dumping margin.

104 *See, e.g.*, *Corus Staal BV v. United States*, 395 F.3d 1343 (Fed. Cir. 2005).
105 *See* SAA at 659.
106 *See* Hillman Case Brief at 1.
107 *Id.* citing *Allegheny Ludlum Corp. v. United States,* 27 C.I.T. 1461, 1465-1467 (Ct. No. 01-01091) (CIT Sep. 29, 2003) (not reported in F. Supp. 2d).
108 *Id.*
109 *Id.* at 2.
110 *Id.*

adverse inferences in such a manner so as to ensure that a respondent does not have a better result by non-cooperation than if they had cooperated.[111]

- What Commerce's self-described "unique" analysis lacks is a recognition that Tianjin Lianda essentially has no more adverse impact either way. Tianjin Lianda does not pay the duties. That company's margin via the China-wide deposit rate, versus the additionally punitive use of their own submission data, is pre-elusive of their future sales, either way. The only parties being irrationally punished by this approach are the United States companies who imported their products, who will pay millions in duties, and would not be importing from Tianjin Lianda again in the near future under either margin.[112]
- In administering the antidumping law, Commerce presumes that all NME companies are government-controlled. This presumption is rebutted only where a NME company demonstrates an absence of *de jure* and *de facto* governmental control over its operations.[113]
- In its *Preliminary Results*, Commerce determined that this case presented a unique factual scenario and found that Tianjin Lianda, prior to its withdrawal from the participation in this review, provided sufficient information to determine that the company was eligible for a separate rate, even though the respondent has withdrawn from the review and will not make its submission available for verification. This finding is incorrect, unreasonable, and contrary to Commerce's longstanding practice of assigning the China-wide rate to Chinese exporters that refuse to cooperate and respond to Commerce's questionnaires.[114]
- Due to Tianjin Lianda's failure to respond Commerce's Section A supplemental questionnaire which asked a series of questions regarding ownership and management, Commerce is missing essential information that is needed for a reasonable determination that Tianjin Lianda is not subject to government control.[115] It is unreasonable and contrary to its prior practice for Commerce to conclude that Tianjin Lianda rebutted the presumption of government control when Commerce was still seeking information on Tianjin Lianda's ownership and management at the time the company withdrew from this proceeding.[116]
- If Commerce is going to find that this information was not necessary in order to determine Tianjin Lianda's eligibility for a separate rate, then it must explain why it asked each of the supplemental questions regarding management and ownership in the first place and why a response to each of these questions was not required in order to determine that Tianjin Lianda had rebutted the presumption of government control.[117]
- For these reasons, Commerce should assign Tianjin Lianda the China-wide rate.[118]

BMD's Comments:

- Under the statute, Tianjin Lianda has the right to have the proprietary information it previously placed upon the record removed from the record.[119]

[111] *Id.*
[112] *Id.*
[113] *See* Hillman Case Brief at 3.
[114] *Id.* at 4.
[115] *Id.* at 5.
[116] *Id.* at 6.
[117] *Id.* at 7.
[118] *Id.* at 9.
[119] *See* BMD Case Brief at 9.

- It had been Commerce's long-standing administrative practice to remove previously submitted business proprietary questionnaire responses from the record upon the receipt of a request to remove information upon the withdrawal of the party's participation in a proceeding.[120]
- Tianjin Lianda's withdrawal from the administrative review and its request for the removal of previously submitted proprietary information from the administrative record were timely and would not prejudice any party or impinge on the integrity of Commerce's proceeding.[121]
- Commerce should therefore grant Tianjin Lianda's routine request that its proprietary responses filed prior to its withdrawal from the administrative proceeding be removed.[122]

The petitioner's Comments:

- Commerce has the discretion to retain a respondent's BPI even when its return has been requested.[123] Under Commerce's typical practice, when a party withdraws from a proceeding and requests to remove its BPI from the record, Commerce ordinarily will grant such a request. [124] Having said that, as the CIT recognized in *Allegheny*, this is not a hard and fast rule.[125]
- Consistent with Commerce's obligation and inherent authority to protect the integrity of its administrative proceedings, and consistent with its precedent in *Live Cattle from Canada*, Commerce may deny such a request when doing so would allow the respondent to manipulate the administrative process and prevent an accurate determination of antidumping rates.[126]
- Use of previously submitted data after a respondent withdraws is consistent with the statutory provisions regarding facts available.[127] Neither the statute nor the regulations prohibit use of a respondent's data after it has withdrawn from a review.[128]
- BMD argues that "the statute and Commerce's administrative practice require the application of total AFA to Tianjin Lianda in the final results." Careful examination of BMD's analysis and argument, however, reveals no support for such a claim. Indeed, as BMD acknowledges, Commerce's history of resort to total AFA when a respondent refuses to cooperate is an "administrative practice," not a statutory requirement.[129] To the contrary, use of a respondent's data after it has withdrawn from a review is entirely consistent with the respondent's certification of its submissions as well as the statutory scheme regarding resort to facts available.[130] Further, Tianjin Lianda's responses were certified by both the company and its counsel.[131]

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120 *Id*.
121 *Id*. at 10.
122 *Id*. at 11.
123 *See* the petitioner's Rebuttal Case Brief at 2.
124 *Id.* at 4.
125 *Id.*
126 *Id.*
127 *Id.* at 11.
128 *Id.* at 6.
129 *Id.*
130 *Id.*
131 *Id*. at 2 and 7-8.

- Commerce must balance any potential negative impact that refusing to allow a respondent to withdraw information may have on its ability to obtain business proprietary information in future proceedings, against any negative impact on the integrity of the proceeding if withdrawal is permitted, and determine where the public interest lies.[132]

Commerce's Position: As discussed below, in light of party arguments, for purposes of these final results we have reevaluated the record evidence and determine that Tianjin Lianda has failed to cooperate to the best of its ability, and has further failed demonstrate its entitlement to a separate rate, and therefore will be assigned the rate for the China-wide entity.

In this review, as discussed in the *Preliminary Results*, Tianjin Lianda submitted a separate rate application.[133] In addition, Tianjin Lianda was selected as a mandatory respondent, and timely responded to the original antidumping duty questionnaire and the first supplemental questionnaire for Section A. However, Tianjin Lianda did not respond to the second supplemental questionnaire for Section A and to the Sections C&D supplemental questionnaires. Additionally, Tianjin Lianda submitted a letter stating that it was withdrawing from participation in this review.[134] This letter was submitted less than two months before the fully extended statutory deadline for the *Preliminary Results*, which made it impossible for Commerce to select another respondent for examination in this review.

In the *Preliminary Results*, we determined that this case presented a unique factual scenario. In particular, we found that Tianjin Lianda, prior to its withdrawal from the participation in this review, provided sufficient information to determine that the company was eligible for a separate rate, even though the respondent had withdrawn from the review and did not make its submission available for verification. Additionally, although Tianjin Lianda did not respond to two outstanding supplemental questionnaire responses, and also submitted a letter withdrawing its participation in this review, we also determined that the record contained sufficient information to determine a rate for Tianjin Lianda using its own information.[135]

We also noted that although we had serious concerns with Tianjin Lianda's actions in the review, calculating a rate for Tianjin Lianda in this review based on its own information resulted in a higher weighted-average dumping margin than that to which it was currently subject, and to which it would be subject if it were found to not be eligible for a separate rate.[136]

Subsequent to the *Preliminary Results*, Tianjin Lianda requested that its business proprietary information (BPI) be removed from the record.[137]

Application of Facts Available with Adverse Inference

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not

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[132] *Id.* at 9.
[133] *See* Stanley's Separate Rate Certification (Stanley SRA) dated November 4, 2016; and Tianjin Lianda's Separate Rate Application (Tianjin Lianda SRA) dated November 15, 2016.
[134] *See* Letter from Tianjin Lianda dated July 10, 2017.
[135] *See Preliminary Results*, and PDM at 11.
[136] *Id.* at 11-12.
[137] *See* Letter from Tianjin Lianda, dated December 26, 2017.

available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner," Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[138] The amendments to the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.[139]

Further, section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the

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[138] *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl.

[139] *See Applicability Notice*, 80 FR at 46794-95.

best of its ability to comply with a request for information. In so doing, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[140] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.[141] In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[142] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[143]

After consideration of the record evidence, and in light of party arguments, we determine that use of facts available with an adverse inference (AFA) is appropriate with respect to Tianjin Lianda. As noted above, Tianjin Lianda withdrew from participation in this review shortly before the *Preliminary Results*, leaving numerous outstanding supplemental questions unanswered. In addition, Tianjin Lianda left little time in the proceeding for Commerce to select another mandatory respondent. Furthermore, because this was the third review since the last time Commerce conducted verification, Commerce intended to verify Tianjin Lianda's submissions. Therefore, we find that pursuant to section 776(a)(2)(A)-(D) of the Act, Tianjin Lianda has withheld requested information, failed to provide information in a timely manner, significantly impeded the proceeding, and further provided information which could not be verified. Furthermore, we find that Tianjin Lianda's actions demonstrate a failure to cooperate to the best of its ability, and therefore pursuant to section 776(b) use of an adverse inference is appropriate.

As discussed in the *Preliminary Results*, we have serious concerns with Tianjin Lianda's actions and any attempts to manipulate the administrative process. As we explained, calculating a rate for Tianjin Lianda in the *Preliminary Results* based on its own information resulted in a higher weighted-average dumping margin than that to which it was currently subject, and to which it would be subject if it were found to not be eligible for a separate rate. As further discussed below, we have reevaluated the record evidence for purposes of these final results and determine that there is insufficient information to determine that Tianjin Lianda is eligible for a separate rate. Therefore, we have not relied on Tianjin Lianda's incomplete questionnaire responses for purposes of determining its margin. However, for the limited purpose of establishing that Tianjin Lianda has not benefitted from its non-cooperation, we have established Tianjin Lianda's margin based upon its available information. As discussed below under Comment 5, after making corrections to our *Preliminary Results* for errors in our calculations, we determine that

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[140] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).
[141] *See also* 19 CFR 351.308(c).
[142] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).
[143] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

the weighted-average dumping margin relying on Tianjin Lianda's incomplete questionnaire responses would not result in a weighted-average dumping margin higher than the current China-wide entity rate. Our treatment of Tianjin Lianda ensures that the company does not manipulate the administrative process and does not benefit from its non-cooperation.[144]

Therefore, we are applying AFA to Tianjin Lianda for these final results. Moreover, Tianjin Lianda is being considered as part of the China-wide entity because it is not entitled to a separate rate. Because we consider Tianjin Lianda to be part of the China-wide entity, it thus receives the China-wide rate of 118.04 percent. This rate remains unchanged pursuant to our current policy, which states that there is no conditional review of the PRC-wide entity.[145]

China-wide Entity

As discussed in the *Preliminary Results*, in proceedings involving NME countries, Commerce has a rebuttable presumption that all companies within the NME country are subject to government control and, thus should be assessed a single AD rate.[146] It is Commerce's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports. To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, Commerce analyzes each exporting entity on an NME country under the test established in *Sparklers*[147] and further clarified in *Silicon Carbide*.[148] For further information, see the *Preliminary Results*.

In order to demonstrate separate rate status eligibility, Commerce normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification (SRC) stating that they continue to meet the criteria for obtaining a separate rate.[149] For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, Commerce requires a separate-rate application (SRA).[150] Companies that submit a SRA or SRC which are subsequently selected as mandatory respondents must respond to all parts of the Department's questionnaire in order to be eligible for separate rate status.[151]

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[144] *See* SAA at 870.

[145] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR at 65963 (November 4, 2013).

[146] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

[147] *See Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

[148] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

[149] *See Initiation Notice*, 81 FR 71064 (October 14, 2016).

[150] *Id.*

[151] *Id.*

We find that Tianjin Lianda has failed to demonstrate its entitlement to a separate rate. In particular, we find that without Tianjin Lianda's responses to our outstanding Section A supplemental questionnaire, in conjunction with its statement that it would no longer participate in this review, and our lack of ability to verify, we are not able to evaluate whether Tianjin Lianda has demonstrated an absence of *de jure* and *de facto* government control with respect to its exports. Therefore, we consider Tianjin Lianda to be part of the China-wide entity, and it thus receives the China-wide rate of 118.04 percent.

Request to Remove BPI

As noted above, Tianjin Lianda has requested that we remove its BPI from the record.[152] There is no statutory provision expressly dealing with the withdrawal of BPI once it has been submitted. In the past, Commerce has allowed submitting parties to withdraw their BPI submissions from the record, as appropriate.[153] Commerce also has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law.[154] Here, we find it necessary to leave Tianjin Lianda's BPI on the record to fully address all issues raised in this proceeding. As discussed in further detail above and in Comment 5, use of Tianjin Lianda's BPI is necessary to demonstrate that the company is in fact not benefitting from its non-cooperation.

Comment 4B: Calculation of a Margin for Tianjin Lianda Based on Incomplete Data

Hillman's Comments:

- Even if Commerce continues to find that Tianjin Lianda qualified for a separate rate, Commerce's decision to calculate a margin based on incomplete responses to Section C and D of the questionnaire was unreasonable and contrary to law.[155]
- Because Tianjin Lianda failed to respond to Commerce's Section C and D supplemental questionnaire, critical information is missing, including: accurate and complete information on alleged market economy inputs, the assigned product codes, the assigned CONNUMs, the date of shipment, the currency in which certain sales were invoiced, the quantity in which certain sales were reported, whether any discounts or rebates were granted, an accurate VAT calculation, any U.S. sales or FOP information on certain types of nails.
- Commerce is also missing accurate and complete information related to Tianjin Lianda's factors of production used to calculate the normal value, including how the weighted average FOPs were calculated, a revised yield loss calculation, a corrected calculation of

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[152] *See* Tianjin Lianda's Letter dated December 26, 2017.
[153] *See Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906, 14908-09 (March 18, 2011).
[154] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 81 FR 85516 (Nov. 28, 2016), and accompanying IDM at Comment 2; *Notice of Final Determination of Sales at Less than Fair Value: Live Cattle from Canada,* 64 FR 56739 (October 21, 1999). *See also Alberta Gas Chemicals, Ltd. v. Celanese Corp*., 650 F.2d 9, 12 (2d Cir. 1981) (recognizing that administrative agencies have the inherent power to protect the integrity of their proceedings).
[155] *See* Hillman Case Brief at 7.

consumption quantities, and the accuracy of the by-product calculation and tolling per-unit consumption values.[156]

- The absence of one or more of these elements of an accurate margin calculation are often cited by Commerce as a reason to deny that calculation and revert to facts available, yet Commerce has accepted all of it in an unverifiable and withdrawn form as presumably the most accurate possible calculation.[157]
- There is little doubt that the preliminary margin for Tianjin Lianda is punitive and based on presumptions of deceptive strategies rather than substantial evidence, established calculation methodologies, or verifiable information. To the extent Commerce relied on the presumption that using Tianjin Lianda's submitted data would assure they did not receive a better result by non-cooperation than by cooperation, Commerce failed to ascertain any facts to demonstrate that (a) the entities bearing the entire burden of the antidumping assessments are the US importers, not this foreign manufacturer, and (b) whether either of the alternative measures of facts available actually placed Tianjin Lianda in a more favorable position by cooperating than by not cooperating.
- For these reasons, Commerce should assign Tianjin Lianda the China-wide rate.[158]

BMD's Comments:

- In situations where a party either withholds information Commerce, refuses to respond to a formal information request or impedes a proceeding by refusing to participate, Commerce's consistent and long-standing administrative practice has been to apply total AFA.[159]
- Commerce's failure to apply total AFA in light of a respondent's failure to respond to questionnaires issued by Commerce and the respondent formally advising its refusal to further participate in the proceeding is completely unprecedented.[160]
- Had Commerce followed the statutory requirements and applied total AFA to Tianjin Lianda, it would have been subjected to the 118.04 percent China-wide margin, a sufficient punitive rate which would have acted as the deterrent that Commerce rightfully sought in this case.[161]
- Commerce wrongly punished the separate rate companies with a rate of equal to 28.21 percent. This rate is almost eight times larger than it would have been had total AFA been applied to Tianjin Lianda.[162]
- If Commerce is concerned that Tianjin Lianda's withdrawal from the administrative review and the resulting application of AFA as to Tianjin Lianda will result in the 22 separate rate companies being subject to the 3.60 percent preliminary Stanley margin, Commerce should have exercised its discretion and selected a greater number of mandatory respondents to prevent this very common and predictable outcome.[163]

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[156] *Id.* at 7-8.
[157] *Id.* at 8.
[158] *Id.* at 9.
[159] *See* BMD Case Brief at 5.
[160] *Id.* at 6.
[161] *Id.* at 7.
[162] *Id.* at 7-8.
[163] *Id.* at 8.

The petitioner's Comments:

- The use of Tianjin Lianda's data will allow Commerce to calculate a final margin for Tianjin Lianda that is accurate and non-distorted as possible.[164]
- Using Tianjin Lianda's data to calculate its margin is lawful, consistent with the company's and its counsel's certifications, and consistent with the authority provided to Commerce under Section 776 of the Act.[165]

Commerce's Position: As described above in Comment 4A, we have determined for these final results that use of AFA is appropriate for Tianjin Lianda, and that it further should be considered as part of the China-wide entity. Therefore, we have not relied on Tianjin Lianda's incomplete questionnaire responses for purposes of determining its margin. However, for the limited purpose of establishing that Tianjin Lianda has not benefitted from its non-cooperation, we have further addressed in Comment 5 below certain changes to our preliminary margin calculations.

Comment 4C: Whether Commerce Should Include Tianjin Lianda's Margin in the Calculation of the Separate Rate

The petitioner's Comments:

- If Commerce determines to resort to total AFA for Tianjin Lianda's margin, it can and should incorporate that margin into the separate rate company margin by calculating a simple average of Tianjin Lianda's and Stanley's margins.[166]
- Congress specifically addressed only investigations in the URAA provisions concerning calculation of all-others or separate rates, leaving Commerce the authority to include margins based entirely on FA when calculating the separate rate margin in administrative reviews.[167]
- As a matter of law, Commerce must ensure that the separate rate margin reflects the economic reality of the separate rate companies and bears some relationship to their actual dumping margins.[168] Commerce's regulations reflect a well-founded concern with manipulation of the separate rate margin.[169]
- For the final results of this review, Commerce should continue to retain and rely on Tianjin Lianda's data to calculate its margin of dumping, incorporating appropriate elements of partial AFA to address obvious discrepancies and gaps in the data. In the unlikely event Commerce assigned Tianjin Lianda a final margin based on total AFA, Commerce can, and should, include that margin in its calculation of the separate rate company margin. In such case, Commerce should rely on a simple average of Stanley's calculated margin and Tianjin Lianda's total AFA margin to calculate the separate rate company margin.[170]

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[164] *Id.*
[165] *Id.* at 11.
[166] *Id.* at 21.
[167] *Id.* at 22-25.
[168] *Id.* at 26-30.
[169] *Id.* at 25-26.
[170] *Id.* at 48.

BMD's Comments:

- Even if Commerce continues its refusal to apply total AFA to Tianjin Lianda in the final results, incorporation of Tianjin Lianda's 332.95 percent calculated margin into the calculation of the separate company rate would not be supported by substantial evidence in the record.[171]
- In non-market economy cases, the country-wide rate, in this case 118.04 percent, is normally also the total AFA rate. Inclusion of the Tianjin Lianda 332.95 percent margin in the calculation of the preliminary separate company rate impermissibly distorted its calculation. The stature expressly excludes use of total AFA margin in the calculation of the separate company rate.[172]
- All 22 separate rate companies submitted either separate rate applications or separate rate certifications. Inclusion of a margin higher than the 118.04 percent China-wide and AFA rate in this case is unrepresentative of the 22 cooperative separate rate companies that fully cooperated with Commerce's administrative review.[173]
- Commerce's Preliminary Results offered no explanation whatsoever as to why the inclusion of the 332.95 percent Tianjin Lianda margin did not distort the calculation of the separate rate margin in this case.[174]

Commerce's Position: As an initial matter, as described above in Comment 4A, we have determined for these final results that use of AFA is appropriate for Tianjin Lianda, and that it further should be considered as part of the China-wide entity. We disagree with the petitioner and observe that we addressed the same issue in the *Nails AR1 Final Results,*[175] *Nails AR6 Final Results*,[176] and *Nails AR7 Final Results*.[177] When calculating a separate rate for non-individually reviewed respondents, Commerce will base this rate on the estimated weighted-average dumping margins established for the individually examined respondents, excluding zero and *de minimis* margins or margins based entirely on AFA.[178] Commerce encountered a similar fact pattern in the fourth AR of *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*.[179] In that case, Commerce assigned the calculated margin of the single mandatory respondent (that was neither zero nor *de minimis* and not based entirely on AFA) to the separate-rate companies as the separate rate margin. Commerce has not deviated from this practice in this review.

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171 *See* BMD Case Brief at 11-12.
172 *Id.* at 12.
173 *Id.*
174 *Id.* at 15.
175 *See Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011), and accompanying Issues and Decision Memorandum (*Nails AR1 Final Results*) at Comment 8.
176 *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016) and accompanying Issues and Decision Memorandum (*Nails AR6 Final Results*) at Comment 3.
177 *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 14344 (March 20, 2017) and accompanying Issues and Decision Memorandum (*Nails AR7 Final Results*) at Comment 12.
178 *See* section 735(c)(5)(A) of the Act.
179 *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decision Memorandum at Comment 6.

As an initial matter, we recognize the petitioner's argument that the statute does not directly prescribe the methodology to calculate the separate rate margin in administrative reviews. However, Commerce has interpreted the methodology described in section 735 of the Act as relevant in administrative reviews. The Federal Circuit has also reasoned that the statutory provision for calculating non-selected rates is relevant in administrative reviews.[180]

The petitioner has misinterpreted the CIT's decision in *Navneet*.[181] There, the CIT clearly acknowledged that the statute "instructs Commerce as a '{g}eneral rule' to calculate all-others rates using the weighted average of the weighted average dumping margins established for individually investigated respondents, excluding any zero or *de minimis* rates and rates based entirely on facts available" and that "if no rates remain after making these exclusions, the statute directs Commerce to use 'any reasonable method.'"[182] Additionally, the court in *Navneet* faced factual circumstances different to those now faced by Commerce in this review; specifically, the fact that Riddhi and SAB – the mandatory respondents under review – both received zero margins, making "the general rule identified in {section} 1673d(c)(5)(A)…unavailable."[183] The petitioner's reliance on *Yangzhou Bestpak*[184] is similarly unavailing. The situation in *Yanghzhou Bestpak* involved averaging a *de minimis* margin with a margin based on total AFA to determine the separate rate margin, and thus like *Navneet*, dealt with factual circumstances that are different from those in this review, where there is a calculated margin for a respondent that can be applied to the separate-rate respondents. Indeed, as observed by the Federal Circuit in *Albemarle*, "It is true that when there are non-de minimis margins assigned to individually examined respondents, the antidumping statute instructs the U.S. Department of Commerce to calculate the separate rate by averaging the margins assigned to the individually examined respondents, excluding any zero and de minimis margins."[185]

Following the legal framework established by the statute, and acknowledged in *Navneet*, *Yangzhou Bestpak*, and *Albemarle*, Commerce will thus act in accordance with law by excluding Tianjin Lianda's margin from the separate rate margin calculation. Because Stanley's margin was not zero, *de minimis*, or based entirely on facts available, its margin is the appropriate basis for determining the separate rate margin. Accordingly, the statute, case law, and Commerce's practice are clear. We will base the separate-rate margin on that of Stanley – the sole mandatory respondent whose margin is not zero, *de minimis*, or based entirely on facts available.

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[180] *See Albemarle Corp. v. United States*, 821 F.3d 1345, 1352-53 ("But the statutory framework contemplates that Commerce will employ the same methods for calculating a separate rate in periodic reviews as it does in initial investigations.").
[181] *See* Petitioner's Rebuttal Brief at 15 (citing to *Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354 (CIT 2014) (*Navneet)* at 1359-1363).
[182] *See Navneet* at 1358.
[183] *Id.* at 1363.
[184] *See Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013) (*Yangzhou Bestpak*).
[185] *See Albemarle Corp. v. United States*, 821 F.3d 1345, 1353-1354 (Fed. Cir. 2016).

Comment 5: Correction of Errors in Tianjin Lianda's Margin Calculation

Hebei Minmetals' Comments:

- Commerce should correct three errors present in Tianjin Lianda's preliminary margin calculation: 1) failure to convert the VATTAXU variable that was reported in RMB; 2) use of the incorrect SV for low carbon steel wire rod; and 3) not accounting for the reported by-products in the NV calculation.[186]

The petitioner's Comments:

- Commerce's determination to deny Tianjin Lianda's claimed by-product offset was correct. Given the lack of record support, Commerce reasonably concluded there was no basis for these offsets and properly excluded the adjustment from its NV calculations.[187]

Commerce's Position: As described above in Comment 4A, we are applying AFA to Tianjin Lianda for these final results and further find that it is ineligible for a separate rate. However, for the limited purpose of establishing that Tianjin Lianda is not benefitting from its non-cooperation, *i.e.*, that Tianjin Lianda is not receiving a lower margin than it would if we determined a margin based on its own information, we have addressed the errors in the preliminary margin calculation. In particular, we agree with Hebei Minmetals that we should correct for certain errors and apply a SV for low carbon SWR, as opposed to steel wire, and use Tianjin Lianda's reported VATTAXU percentage to calculate a deduction from U.S. price in USD rather than RMB. Correction of these errors, as demonstrated in the calculation memo, would reduce Tianjin Lianda's margin below the China-wide entity rate of 118.04 percent.[188] We further agree with the petitioner that it is appropriate to continue to deny Tianjin Lianda's by-product offset.

<u>Stanley Issues</u>

Comment 6: Plastic Granules Surrogate Value

The petitioner's Comments:

- Commerce incorrectly valued plastic granules at the *Preliminary Results* using HTS 3902.10.90.090, "Other," which falls under HTS 3902.10, "Polypropylene, In Primary Forms." However, Stanley reported that its plastic granules are made from "calcium carbonate reinforced polypropylene plastic" indicating that the granules contain more than just polypropylene.[189]
- The descriptions, photographs, and explanation of how the granules are used in the production process all indicate that Stanley considers the granules as "plastic," rather than just "polypropylene."[190]

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[186] *See* Hebei Minmetals' Case Brief at 3-6.
[187] *See* Petitioner's Rebuttal Brief at 12-14.
[188] *See* Tianjin Lianda Final Calculation Memorandum, dated concurrently with these final results.
[189] *See* Petitioner's Case Brief at 6-7.
[190] *Id*. at 7-9.

- As a result, Commerce should value Stanley's plastic granules input using the Thai HTS category 3921.90.90, which includes "Other plates, sheets, films, foil and strip, of plastics: other: other."[191]

Stanley's Comments:
- Commerce should value plastic granules using the Thai HTS category, 3902.10.90, which follows Commerce's practice on this same issue in the four immediately preceding segments.[192]
- The notes of HTS Chapter 39 clearly demonstrate that Stanley's plastic granules should not be classified under HTS 3921.90.90.[193]
- The petitioner's arguments are based on speculation or a mischaracterization of the record evidence.

Commerce's Position: We agree with Stanley. For further explanation of our SV framework, please see Comment 1. Commerce addressed this issue in the four previous administrative reviews.[194] There, we fully explained our rationale for using Thai HTS 3902.10.90, namely that Stanley's plastic beads more closely match the description under this HTS category. For the *Preliminary Results*, we based the SV for plastic granules on Thai HTS category 3921.90.90.090. This HTS category more specifically covers Stanley's plastic beads because it covers polypropylene and not just "plastic." Additionally, there is no record evidence that Stanley's plastic beads lend themselves to being cut into regular shapes as per HTS 3921 categories.[195] We find that these same reasons are supported by the record of this administrative review.[196] Further, it is plain that the material at issue, granules of polypropylene plastic, are not "Other plates, sheets, films, foil and strip. . ." The record evidence clearly indicates that the material at issue are not any of those physical forms described in HTS 3921.90.90.[197] Thus, for the final results, we will continue to value Stanley's plastic granules for these final results using Thai HTS subheading 3902.10.90.090.[198]

Comment 7: Sealing Tape Surrogate Value

The petitioner's Comments:
- In the preliminary results, Commerce valued Stanley's basic packaging tape using Thai HTS category 3920.20.10000 (Biaxially Oriented Polypropylene (BOPP) Film).

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[191] *Id*. at 7.
[192] *See* Stanley's Rebuttal Brief at 4-5.
[193] *Id.* at 5.
[194] *See Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying Issues and Decision Memorandum at Comment 11; *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying Issues and Decision Memorandum (*Nails AR5 Final Results*) at Comment 12; *Nails AR6 Final Results* at Comment 8; and *Nails AR7 Final Results* at Comment 10.
[195] *Id.*
[196] *Id.*
[197] *See* Stanley's Section D Questionnaire Response, dated March 31, 2017, at Exhibit D-15.
[198] *See* Final SV Memo.

BOPP film, of course, is not tape. It does not have adhesive on one side and thus is unable to stick to a surface.[199]

- For purposes of the final results, Commerce should change the surrogate value used for Stanley's sealing tape to actually reflect a value for plastic tape, *i.e.*, a material that is sticky on one side and that can adhere to things. Continuing to rely on a value for BOPP film clearly fails to assign a surrogate value that bears a rational and reasonable relationship to the factor of production it represents.[200]

Stanley's Comments:

- Stanley's sealing tape is basic packaging tape made from biaxially oriented polypropylene and adhesive. Thus, the Thai HTS category 3920.20.10, "Other plates, sheets, film, foil, and strip of plastics, non-cellular and not reinforced, laminated, supported, or similarly combined with other materials: of polymers of polypropylene: biaxially oriented polypropylene film" most closely matches this packing input.[201]
- Importantly, the petitioner does not identify an alternative Thai HTS classification on which to base the SV, and Commerce rejected a similar argument by the petitioner in the immediately preceding review.[202]
- Various kinds of "tape" do not stick to anything (*e.g.* paper tape, dry wall tape, recording tape, police tape, fabric tape, *etc*.). Thus, Commerce's focus on the BOPP material comprising Stanley's sealing tape as the key element on which to determine the SV for it was correct.

Commerce's Position: After reviewing the record information, we agree with the petitioner, *i.e.*, that a SV for sealing tape should be based on adhesive tape. For further explanation of our SV framework, please see Comment 1. For the *Preliminary Results*, we based the SV for sealing tape on Thai HTS category 3920.20.10.000. Although Stanley argues that certain kinds of tape may not be adhesive in nature, the fact remains that the packing input at issue, sealing tape, plainly is by its very name meant to seal things, thus having an adhesive quality. As noted above, HTS category 3920.20.10 lacks any such descriptor stating that the materials classified therein are adhesive. While Stanley faults the petitioner for not identifying an alternative HTS category, a review of the record indicates that the petitioner did proffer HTS category 3919.10, ""Plates, Sheets, Film, Foil, Tape, And Other Flat Shapes Of Plastics, Self-Adhesive, In Roll Not Over 20 Cm. (8 in.) Wide."[203] This HTS category clearly includes materials that not only are plastic but that are also adhesive, and thus, on balance, is a closer match for Stanley's sealing tape.

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[199] *See* Petitioner's Case Brief at 10-11.
[200] *Id*.
[201] *See* Stanley's Rebuttal Brief at 4-5.
[202] *Id*., citing *Nails AR7 Final Results* at Comment 9.
[203] *See* the petitioner's SV submission, dated April 17, 2017, at Exhibit 1; *see also Nails AR7 Final Results* at Comment 9.

Comment 8: Thermal Transfer Ribbon Surrogate Value

Stanley's Comments:

- Commerce based the SV for thermal transfer ribbon on the imports classified in Thai HTS category 3921.90.10.001. That statistical subheading covers only merchandise that is thinner than 10 microns *(i.e.,* 10/1,000 of a millimeter), which is substantially thinner than thermal transfer ribbon used by Stanley and even thinner than a human hair.[204]
- Moreover, the volume of imports classified under the -.001 statistical subheading is a miniscule fraction of those under 3921.90.10. Commerce should therefore base the Surrogate Value for thermal transfer ribbon on the value of imports classified under subheading 3921.90.10 in the final results.[205]

The petitioner's Comments:

- Commerce's preliminary HTS classifications are reasonable given the record evidence. Nowhere does the record in this proceeding specifically indicate the thickness of Stanley's ribbon input. Stanley cites to Exhibit D-1(A) of its original Section D response, where the ribbon input is listed as "Thermal Transfer Ribbons80*80*300." It is not, however, apparent from this description alone what the width of Stanley's ribbons are, and nowhere does the record otherwise indicate what the "80*80*300" figures refer to (*i.e.*, dimensions or some other physical characteristic) or what unit they represent.[206]

Commerce's Position: We agree with the petitioner. For further explanation of our SV framework, please see Comment 1. For the *Preliminary Results*, we based the SV for thermal transfer ribbon on the imports under Thai HTS category 3921.90.10.001. The petitioner is correct to point out the record evidence cited by Stanley does not establish the thickness of its thermal transfer ribbon,[207] and thus does not dissuade us from continuing to use Thai HTS category 3921.90.10.001. Moreover, Stanley's argument about the small quantity of imports under this category is similarly unavailing, given that its own consumption of thermal transfer ribbon during the POR was even smaller, and thus the two quantities are not commercially dissimilar.[208]

Comment 9: Orthophosphoric Acid Surrogate Value

Stanley's Comments:

- Commerce based the Surrogate Value for orthophosphoric acid, PHOSACIDSV, on the value of imports classified under statistical subheading 2809.20.99.101 of the Thai HTS, which covers only phosphoric acid not exceeding a concentration of 25% w/w. Nowhere in the administrative record is there evidence that the orthophosphoric acid used by Stanley Langfang's subcontractor does not exceed a concentration of 25% w/w.[209]

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[204] *See* Stanley's Case Brief at 5-6.
[205] *Id*.
[206] *See* Petitioner's Rebuttal Brief at 31-32.
[207] *See* Stanley's Section D Response, dated March 31, 2017, at Exhibit D-1(a).
[208] *Id*.
[209] *See* Stanley's Case Brief at 7-8.

- Moreover, the volume of imports classified under the -.101 statistical subheading is a miniscule fraction of the volume of imports classified under subheading 2809.20.99. Commerce should therefore base the Surrogate Value for orthophosphoric acid on the value of imports classified under subheading 2809.20.99.[210]

The petitioner's Comments:

- With regard to orthophosphoric acid, while Stanley asserts there is no record evidence that its acid does not exceed 25% w/w concentration, the fact is that there is no record evidence that it does. Stanley cites to nothing in support of the concentration level because it never provided any such information. Only now, in its brief, does the company attempt to clarify the nature of this input.[211]

Commerce's Position: We agree with the petitioner, who is correct to point out that there is no record evidence to support Stanley's unsubstantiated assertion about the concentration of this input. For further explanation of our SV framework, please see Comment 1. For the *Preliminary Results*, we based the SV for orthophosphoric acid on the imports under Thai HTS category 2809.20.99.101. Based on the foregoing, there is nothing on the record to dissuade us from continuing to use Thai HTS category 2809.20.99.101to value this input.

Comment 10: Treatment of Stanley's Wiredrawing Toller's Scrap

The petitioner's Comments:

- Commerce should not grant the by-product offset for scrap generated by Stanley's wiredrawing toller. Stanley has provided nothing that links monthly sales of scrap to production, nor has it demonstrated this scrap has commercial value.[212]
- At verification, Commerce discovered that the wiredrawing toller's alleged scrap sales are not recorded in its books and records and, as such are not substantiated by any actual records. In NME cases, Commerce requires evidence that scrap has commercial value and that the amount of the offset is limited to the total production quantity of the by product, standards which the wiredrawing toller failed to meet.[213]

Stanley's Comments:

- The weigh tickets from the wiredrawing toller constitute "actual records" that the wiredrawer sold scrap generated in drawing SWR, thus refuting the petitioner's contention.[214]
- Further, as documented by the first three pages of Verification Exhibit FVE 11, the verifiers reviewed a reconciliation of the wiredrawer's processing of wire for Stanley Langfang and other customers that - contrary to Mid Continent's claim - does link the subcontractor's sales of scrap to wire drawn for Stanley Langfang and thus to the production of subject

[210] *Id.*
[211] *See* Petitioner's Rebuttal Brief at 32.
[212] *See* Petitioner's Case Brief at 11-16.
[213] *Id.*
[214] *See* Stanley's Rebuttal Brief at 14-15.

merchandise. Thus, consistent with its obligation to calculate the antidumping margin as accurately as possible, Commerce should grant the offset.[215]

Commerce's Position: Commerce's practice is to grant an offset for by-products generated during the production of the merchandise under consideration if evidence is provided that such by-product has commercial value.[216] Moreover, parties requesting a by-product offset have the burden of presenting to Commerce not only evidence that the generated by-product is sold or re-used in the production of the subject merchandise, but also all the information necessary for Commerce to incorporate such offsets into the margin calculation.[217] In the *Preliminary Results*, we granted the by-product offset for the scrap generated by Stanley's wiredrawing toller. Upon further review, we agree with the petitioner that the record does not support Stanley's request. Although Stanley argues that its documentation of sale of wire drawing scrap meets the burden described above, we find that the documentation provided by Stanley is not sufficient. As discussed in *Nails AR5 and Nails AR7*, and above, our practice is to grant an offset for by-products generated during the production of the merchandise under consideration.[218] Here, Stanley provided weigh tickets purportedly relating to its toller's scrap sales, however Stanley did not provide documentation demonstrating that this scrap was sold for commercial value, nor was there any documentation to tie any purported by-product sales into the toller's books and records.[219] Accordingly, for these final results, we will deny Stanley's by-product offset for wiredrawing scrap steel.

Comment 11: Correction of a Transposition Error for the Corrosion Resistant Coating and Paint Thinner Surrogate Values

Stanley's Comments:

- In the *Preliminary Results*, Commerce inadvertently transposed the field names for these two FOPs. Corrosion resistant coating was incorrectly labeled as THINNERSV and the paint thinner used with it was incorrectly labeled as ANTICORRSV. Thus, the incorrect SVs were applied to each, and Commerce should correct this error.[220]

The petitioner's Comments:

- Stanley's argument focuses on the transposition of the two variables in question in Commerce's Prelim SV Memo. However, an examination of the actual SAS margin calculation indicates that the correct SVs were applied to the two FOPs in question.[221]

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[215] *Id*.
[216] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) and accompanying Issues and Decision Memorandum at Issue 10.
[217] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 74 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 34.
[218] *See Nails AR5* and accompanying Issues and Decision Memorandum at 47-48.
[219] *See* Stanley Langfang Verification Report at 1, 14, and FVE 11.
[220] *See* Stanley's Case Brief at 5.
[221] *See* Petitioner's Rebuttal Brief at 30-31.

Commerce's Position: We agree with the petitioner. We did apply the correct SVs to each FOP in the margin calculation program. Thus, no correction is needed.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.

☒	☐
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Agree	Disagree

3/9/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance